

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6310 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and sd/-

MR.JUSTICE M.C.PATEL sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

SHREE SONAL GUM INDUSTRIES

Versus

INCOME TAX OFFICER

Appearance:

MR KA PUJ for Petitioners

MR MANISH R BHATT for Respondents

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE M.C.PATEL

Date of decision: 13/07/1999

ORAL JUDGEMENT(per B.C. Patel,J.)

The petitioners, by this application, have prayed that the order dated 2.2.1994 passed by the Assistant Director of Income Tax (Prosecution) II, Ahmedabad, vide Annexure 'E', calling upon the petitioner No.1 to pay Rs.47,658/- as compounding fees, be quashed and set

aside. It appears from the record placed before us that for the years 1975, 1976 and 1977, the amount of tax was deducted. However, the same was not deposited in accordance with the provisions of the Income Tax Act, 1961 ("the Act", for short). The petitioner No.1 applied by letter dated 17.4.1989 (Annex.'B'), for compounding the offences, after the prosecution was launched under Section 276B of the Act. It appears that the Assistant Director of Income Tax (Prosecution) accepted the request and by an order dated 2.2.1994 called upon the petitioner No.1 to pay the compounding fees.

By the present application, it is also prayed to quash and set aside the sanction granted by respondent No.2 for filing criminal complaints against the petitioners, the same being ultra vires, illegal and void and further directing them not to proceed with the criminal complaints pending before the Addl. Chief Metropolitan Magistrate, Ahmedabad.

It is required to be noted that the petitioners moved the learned Single Judge by filing three different applications under Section 482 of the Code of Criminal Procedure for quashing the proceedings, raising the contentions which are raised before us. Mr.Puj, learned Advocate for the petitioners, fairly stated that he is not pressing the similar prayer made in this application, as different applications are preferred for quashing the proceedings. In our opinion, he has rightly not pressed the prayer made in this application as a substantive application is already pending before the Court and it will be open for him to raise all the contentions which are raised before us in this application.

So far as the compounding fees are concerned, Mr.Puj submitted that the amount of tax deducted is much less than the amount fixed for compounding the cases. In order (Annexure 'E'), there is a reference that the compounding fees payable comes to Rs.23,008/-, calculated at 5% per month of the amount in default. Litigation expenses are also included. Considering these aspects, total amount of Rs.47,658/- was demanded. Our attention is drawn to a reported decision of the Apex Court in the case of Y.P. CHAWLA AND OTHERS v. M.P. TIWARI AND ANOTHER, reported in 195 I.T.R. 607. Section 279(2) of the Income Tax Act, 1961 confers the power on the Commissioner to exercise the discretion in compounding offences. Central Board of Direct Taxes has issued instructions from time to time. The Explanation empowers the Board to issue orders, instructions or directions for the proper composition of offences under section 279(2).

Mr.Puj could not point out anything from the material on record that the Commissioner has failed to exercise his discretion under section 279(2) of the Act in conformity with the instructions issued by the Board from time to time. If the powers are exercised in conformity with the directions issued by the Central Board of Direct Taxes, then, in absence of any material placed on the record, it would not be correct to say that the impugned order is bad in law and hence the application is required to be rejected. The application is accordingly rejected. Rule discharged with no order as to costs.
